

Aetsy Daw

THE SENATE OF THE STATE OF TEXAS
SITTING AS A HIGH COURT OF IMPEACHMENT

AUG 15 2023

CLERK OF THE COURT

IN THE MATTER OF
WARREN KENNETH
PAXTON, JR.

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HOUSE MANAGERS' RESPONSE TO PAXTON'S MOTION TO DISMISS BASED
ON THE SO-CALLED FORGIVENESS DOCTRINE
AKA PART I OF THE FACTS

Warren Kenneth Paxton (“Paxton”) filed two motions that give rise to the need for a detail factual narrative: a No Evidence Summary Judgment (“MSJ”) and a Motion to Dismiss based on the so-call forgiveness doctrine (“Motions”).¹ Both of these motions claim the House does not have the evidence needed to support the Articles of Impeachment. The facts in support of our two responses are so voluminous that the House had chosen to put part of the facts in this Response. We incorporate by reference the second set of facts and arguments set forth in the MSJ Response. As set forth herein, the facts show how Paxton denied his misdeeds, and covered his tracks so he could help Nate Paul.

The exhibits supporting Part I and Part II of The Facts are important. They detail the extensive steps Paxton used to morph the Office of the Attorney General into Paul’s concierge law firm and, along the way, cover up his abuse of the office. And these records show how, time and time again, OAG Senior Staff continually beseeched Paxton to not let Paul use the OAG for his “counterattack” on innocent citizens and law enforcement.

I. Evidence shows that at a minimum, a fact issue exists about what the public knew.

Paxton claims the public knew about all his misconduct and, by re-electing him in 2022, must have forgiven him for his offenses. Substantial evidence shows otherwise. Paxton’s denials, half truths, and downright lies enabled him to conceal the truth from the public.² Now is the time for trial to proceed. First, it is logically and legally inconceivable that the public can haven forgiven conduct that the office holder denies he ever committed and adamantly seeks to hide. But even if, despite his denials and deceit, the public had full knowledge of all relevant facts, as Paxton’s motion asserts, such a defense still calls for a trial. This is because Paxton’s argument raises a fact issue that can *only* be resolved after the Senate hears all the evidence.³

II. Paxton begins his scheme by trying to enlist Senior Staff.

In December 2019, then Attorney General Paxton asked Mark Penley, the top criminal law deputy at the Office of the Attorney General (“OAG”), to join a call with Paul, Paxton’s buddy and campaign donor. Penley sat next to his boss in the front seat of a car parked at the Highland Park Village Shopping Center. Paul, an Austin developer with a crumbling real estate empire, was upset about the execution of a search warrant on his home and businesses in August 2019. Paxton introduced Penley on the call stating, “This is a friend of mine, Nate Paul, and he’s had some issues with the FBI and I want you to listen to his story and then let’s talk about it.”

Paul launched into a tale of how FBI agents had abused their power with an August 2019 search of Paul’s properties. Penley, a former federal prosecutor, kept wondering: “Why is the Attorney General having me listen to this? Where is the State interest in this? This is not something our office should be involved in.” Paxton, on the other hand, *blindly accepted Paul’s conspiracy* and at the end said, the FBI was “doing really bad things” to Paul, which was “terrible.”

OAG’s Senior Staff⁴ spent nine months trying to save Paxton from his constant insistence on using the power of the Attorney General’s Office to help Paul. OAG Senior Staff considered Paul a con man. Hand-picked by Paxton to run America’s third largest attorney general’s office, the Senior Staff had to choose whether to follow their conscience and the law, or Paxton’s directives to abuse the power and resources of the OAG. These Senior Staffers, loyal to Paxton and his stated ideals, viewed Paul as a crook. They believed Paul wanted to harness the State’s power and interfere with a federal criminal investigation of him and protect his financial interests. Senior Staff urged Paxton to stay away. But when it came to Paul, Paxton was immune to reason.

In 2019 and 2020, Paxton became entangled in Paul’s web of deceit. Paxton continually abused the power of his office to advance Paul’s aims. In return, Paul helped Paxton in basic and bizarre ways:

- Paul created an Uber account for Paxton under the alias “Dave P.” The account, according to Uber records, was jointly accessed by Paxton and Paul. Paxton used this account, to go to the Pearl Lantana Apartments, where his mistress resided;⁵
- The apartment lease for Paxton’s mistress shows Paul hired her June 2020 to work at his company, allowing her to be more accessible to Paxton instead her residing in San Antonio where she previously lived;⁶ and,
- Paul paid for renovations at Paxton’s Austin home, which Paxton sought to conceal.⁷

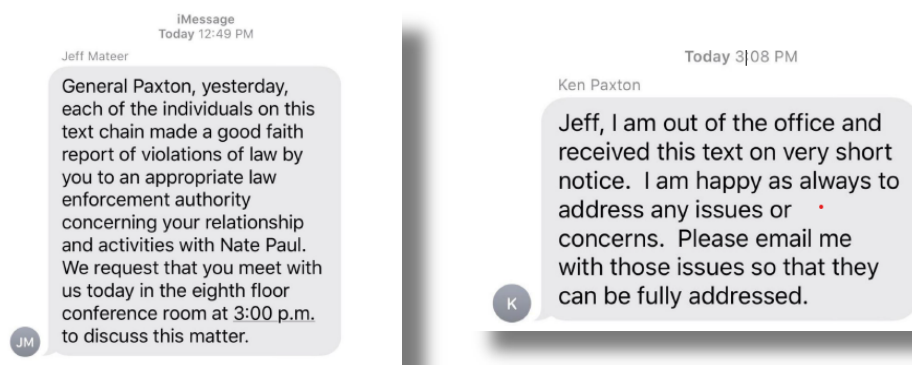
At the same that Paul had provided these perks, Paxton went to great lengths to hide the relationship. Paxton frequently ditched his security detail so he could meet with Paul and others.⁸ He used burner phones and secret personal email accounts.⁹ Uber records reflect drivers picked up Paxton under the alias of “Dave P” a block from his home and ferried him to his lover’s or Paul’s properties more than a dozen times from August 6, 2020, until October 2, 2020.¹⁰

In Spring and Summer 2020, during the height of the COVID pandemic, on occasions that Paxton’s Executive Aid was present, Paxton and Paul met at least 20 to 24 times. Paxton and Paul would often eat together and talk about Paul’s desire to see the FBI’s sealed search warrant affidavit for Paul’s properties. These conversations showed that Paxton was not an innocent bystander to Paul’s complaints. On one occasion, when Paul expressed his desire to see the FBI’s search warrant affidavit, *Paxton* suggested that Paul try an open records request. The significance is that Paxton’s office would control the answer regarding whether Paul got the records. That records request by Paul, at the suggestion of Paxton, became an obvious example of how Paxton tried to use OAG for Paul’s direct benefit. Paxton unsuccessfully urged OAG to override decades of established legal precedent to get Paul that confidential material. (In the end, however, Paxton ultimately succeeded in getting the information to Paul.)

In Summer 2020, Andrew Wicker, Paxton’s assistant, observed several occasions when Paxton and his contractor walked through Paxton’s home, undergoing renovations after storm

damage. When Paxton discussed changes that added costs the contractor responded, “Okay. I will check with Nate.”¹¹ The contractor even e-mailed Paul photos of Paxton’s newly finished floors.¹²

Despite his hands-on management of a criminal investigation into Paul’s enemies, Paxton twice feigned ignorance on the Mark Davis radio show about why Senior Staff had reported him to the feds. Asked by Davis on January 31, 2022, about events, Paxton said: “*I didn't know why they did it. They didn't explain it to me. They didn't come to me ahead of time to say, "You did this. You did that."*”¹³ Such a lie ignored how Senior Staff had repeatedly begged Paxton to stop allowing Paul’s abuse of OAG. Senior Staff had **literally** texted Paxton about the FBI meeting:¹⁴



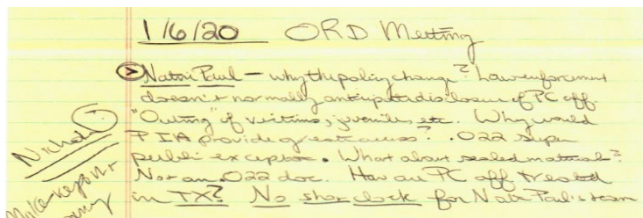
Paxton’s vehement rejection of wrongdoing provided 2022 voters with a false picture. Without the House’s investigation, Texans would still be in the dark.

A. Paxton used the OAG’s power to interfere with a federal investigation of Paul.

On average, the OAG receives 40,000 open records requests each year. During his time as AG, Paxton took an unusual personal interest in only *one* request: Paul’s. In August 2019, a federal joint task force raided Paul’s home and businesses.¹⁵ Thereafter, Paul fixated on the people who had executed the search warrant, demanding to know, who they were, what they knew, and how they knew it. Specifically, Paul wanted the probable cause affidavit that identified witnesses, victims, and confidential sources. So, Paul turned to his friend, Paxton, for help.

The two had lunch together and discussed the affidavit. Paxton suggested Paul use an open records request and in September 2019, Paul’s attorneys filed an open records request with the State Security Board (the “SSB”) asking for files relating to Paul or World Class (*i.e.*, the file relating to the Search).¹⁶ The law barred release of the file because of the ongoing investigation. As a matter of public policy, the Legislature has determined that disclosing such information threatens effective law enforcement, compromises public safety, exposes victims and cooperating witnesses to danger and harassment. OAG denied Paul’s SSB request. In March 2020, his lawyers asked for records from the Department of Public Safety (the “DPS”), which had assisted the SSB and FBI.¹⁷ DPS asked OAG for help protecting the confidential materials. What should have been a standard response denying Paul the records, became anything but.

Paxton insisted to OAG deputies Ryan Bangert and Ryan Vassar that law enforcement had “railroaded” Paul. Paxton didn’t want OAG to help the DPS or FBI “in any way.” Quite the opposite. Paxton demanded that the OAG take the unprecedented step of allowing Paul to access the information he was requesting.¹⁸ In interviews, Bangert and Vassar, explained how they repeatedly pleaded with Paxton that information’s release would violate 40 years of OAG precedent. There existed an ongoing law enforcement investigation. Releasing these records would fly in the face of the law. Never mind the potential damage that could result from providing the confidential information to Paul. Bangert’s notes reflect his alarm about such a “policy change”:¹⁹



After meeting with Vassar and Bangert, and reviewing the Open Records Handbook, Paxton demanded the file. This material included an unredacted FBI letter identifying individuals involved

in the August 2019 raid. Paxton held onto the file for more than a week. Ultimately, *OAG* did not disclose the information to Paul. But *Paxton* did. As events in September 2020 showed, Paul had received the information. His “special prosecutor” prepared criminal grand jury subpoenas with that information to harass FBI and DPS agents, and lawyers at the U.S. Attorney’s Office.

B. Paxton used the OAG’s power to help Paul avoid paying a charitable trust.

OAG has a legal duty to protect charities. As part of the OAG’s public service mission, the OAG is notified of all litigation involving charities, which it is legally required to protect. In 2011, The Roy F. & Joann Cole Mitte Foundation provided scholarships to Texas students, and it invested in companies that Paul controlled. When Paul stopped meeting the company’s reporting obligations, the Foundation sued. In July 2019, the Foundation and World Class settled for \$10.5 Million. Shortly after the August 2019 search, Paul reneged on the deal.²⁰ So, litigation resumed.

In June and July 2020, after OAG shot down Paul’s public records request, Paxton pushed for OAG’s intervention in this litigation in a manner that was 180-degrees contrary to the OAG’s legal purpose, and previous advice. The OAG’s intervention *only* benefitted Paul, not the charity OAG was supposed to protect. The initial analysis by the OAG’s charitable litigation division lawyer, summarized in a two-page memo, determined the charity had strong counsel that was protecting the charity’s interest. The Mitte Foundation did not need OAG’s help.²¹

In Summer 2020, however, Paxton made a sudden and forceful push for OAG to intervene and help Paul, not the charity. Paxton arranged for Paul to have an off-the-books meeting with Bangert, supervisor to Josh Godbey, in the hopes this would clear roadblocks for OAG to join the lawsuit. Paul did not perceive Godbey, a senior attorney in the charitable litigation section, as helpful. This frustrated Paxton. Bangert’s notes show, Paxton’s insistence made no sense. Paul’s companies were involved in fraudulent transfers.²² The charity, not Paul, needed OAG’s help.

Dissatisfied with OAG’s refusal to heed his direction, in early July 2020, Paxton directed OAG to stop all proceedings, prevent further discovery, and join Paul at mediation.²³ When OAG attorneys pushed back, Paxton urged to have them fired. E-mails show Paul personally discussed the mediation with Paxton, who urged Paul to “commit.”²⁴ The night before that mediation, OAG called the Foundation’s lawyer, Ray Chester. OAG had included Paul’s sister, Sheena, on the call; she and OAG spoke “as one.”²⁵ Chester said the ambush by Sheena Paul and OAG caused the Foundation to feel “ominous pressure.” Mediation the next day “was extremely odd.” Mitte found itself negotiating with OAG, the agency legally tasked with protecting it.

OAG “threatened” and tried to intimidate Mitte into taking the absurdly low settlement offer, according to Chester. Unsurprisingly, the parties did not settle. A hearing on OAG’s Motion to Stay proceedings was then scheduled for late July 2020. Paxton announced he would personally argue the motion in court. A July 22, 2020 memo by Jeff Mateer, the First Assistant Attorney, detailed how Senior Staff had talked Paxton out of his crazy idea.²⁶

This morning Blake Brickman, Marc Rylander and I met with Attorney General Paxton to discuss his personal involvement with any matters involving Nate Paul or his affiliated companies and partnerships, including World Class Holdings.

This meeting arose because of a message that I received earlier in the morning that General Paxton was planning on personally arguing a motion in a proceeding involving a charitable trust, the Mitte Foundation, who is in litigation with one of Mr. Paul’s entities. By the time we met with AG Paxton, he had discussed the matter with Darren McCarty, who had convinced him that he should not be arguing or otherwise involved in the litigation matter.

Blake Brickman, Paxton’s Deputy for Policy and Strategic Initiatives, had Mateer document Paxton’s unheard of and ill-advised intent.²⁷ During the meeting in Mateer’s office, he extracted a promise: Paxton would not have further personal involvement in OAG matters involving Paul. Paxton broke his pledge the next day, meeting with Penley about Paul’s criminal complaint.

C. Paxton used the power of the OAG to help Paul avert damaging foreclosures.

When COVID-19 swept across the United States in Spring 2020, OAG declared that business, churches, and schools should remain open.²⁸ But in July 2020 the “open for business” mantra fell by the wayside at OAG for one person in the state: Paul. Banks had foreclosed on

Paul's properties, and they faced immediate auction. Paul asked Paxton for help. Paxton obliged, forcing OAG to publish an opinion concluding that foreclosure sales should be stopped due to COVID restrictions. The opinion served as a direct example of Paxton using the influence of OAG to advance Paul's interest even though such a posture contradicted OAG's past legal positions.

The opinion issued surfaced the last week of July 2020, a week after Paxton had promised on July 22, 2020 that going forward he would not have any further personal involvement with any matters that this office is handling that relate to Mr. Paul or his companies and partnerships.²⁹ Paxton approached Bangert, who had previously supervised the division that issued legal advisories. Paxton asked whether outdoor foreclosure sales could proceed due to COVID-19 crowd restrictions, Bangert said he'd investigate. A few days later, Paxton asked for the draft. Bangert did not know what this opinion was for or from where the request came.³⁰ Bangert asked Paxton the requestor's identity. Paxton provided a scrap with a name and number. Bangert called, telling the stranger his name and his OAG position. The man had no idea what Bangert was talking about.

Bangert went to Vassar for help, who agreed the opinion needed a legislative requestor. The OAG approached Senator Bryan Hughes. When that staffer, Ryan Fisher, checked in with Hughes via text about the request, Hughes told Fisher that "Paxton did call. We had a good visit."³¹ Hughes agreed to be Paxton's requestor, having no idea that Paxton requested the opinion to help Paul.

On Friday, July 31, 2020 and into Saturday, August 1, 2020, Vassar researched and drafted, while Bangert edited. As the two deputies exchanged drafts Paxton kept constantly calling, instructing Bangert on the prose. Saturday afternoon, Vassar and Bangert completed a memo and a draft. Their opinion said that consistent with the law and the policy of the Attorney General's Office that COVID-19 does not prevent these auctions and they should be allowed to proceed. This aligned with OAG's past CV-19 opinions that favored keeping businesses open. Saturday

afternoon Paxton read the draft and told Bangert that “this is the wrong answer.” He wanted them to flip the conclusion: foreclosure sales should be stopped.³²

Then, at the insistence of Paxton, Bangert and Vassar worked through Saturday night and into Sunday morning. They produced an opinion consistent with Paxton’s insistences. The entire time the lawyers drafted Paxton’s ordered conclusion, Paxton kept calling Bangert, asking: “Are you done yet?” It seemed “like someone was holding him hostage,” Bangert said of Paxton. After Vassar and Bangert finished revising, Bangert sent the draft to Paxton **who edited it himself**. Bangert and Paxton exchanged further drafts, publishing at 1 A.M. on Sunday, August 2, 2020.³³

On Monday, on August 3, 2020, Paul’s filed the Midnight Opinion in a letter to a judge, arguing the OAG’s Midnight Opinion meant the August 4th foreclosure sale for Paul’s property should not proceed.³⁴ Paul’s lawyers pointed to the Midnight Opinion as a basis for delaying other foreclosures, too.³⁵ It is hard to imagine a more blatant abuse of Paxton’s office.

D. Paxton used the power of the OAG to let Paul conduct a sham criminal investigation.

Few events better exemplify the degree to which Paxton allowed Paul to hold the OAG hostage for his own gain than the criminal investigation into law-abiding citizens whom Paul deemed his adversaries. For months, OAG Senior Staff had told Paxton what Director of Criminal Law Enforcement, David Maxwell said from the beginning—that Paxton “need[ed] to get away from [Paul]. He’s a criminal.”³⁶ Others told him the same thing, but Paxton blew them off.³⁷ Paxton insisted that Penley and Maxwell work with Paul and his lawyer, Michael Wynne, knowing this would allow Paul to harness the OAG’s criminal powers to derail a federal criminal investigation into Paul and his companies.

As a clear demonstration of Paxton’s attempts to help Paul simultaneously over a broad front, one only must look at his conduct in the criminal enforcement area at the same time he is deeply involved in the Mitte litigation. In July 2020, Brickman, Mateer, Godbey, and McCarty

were all trying to beat back Paxton’s intervention in the Mitte litigation to help Paul’s financial interests. Roughly at the same time, Paxton, who had pledged on July 22, 2020 to have no further dealings with Paul, began on July 23, 2020 to re-insert himself by forcing the criminal enforcement division to continually meet with Paul in response to Paul’s outrageous, unbelievable allegations. Paxton turned to Penley and David Maxwell to try to force them to help Paul.

¹ We address the legal arguments regarding forgiveness in our Response to the Motion to Exclude Evidence.

² *In re Bazan* 251 S.W.3d 39, 47-48 (Tex. 2008) (Willett, J. concurring) (footnotes omitted).

³ See House Managers’ Rsp. to Mot. to Exclude Evidence of Any Alleged Conduct that Occurred Prior to January 2023.

⁴ Ex. 1.

⁵ Exs. 89, 89-A, 149, 150.

⁶ Ex. 94 at 66:13-67:7 ; 149, 150.

⁷ Ex. 19 at 33:3-19, 36:2-37:6; Ex. 41.

⁸ Ex. 19, Wicker transcript at 53:21-54:8, 81:5-24, Exs. 89, 89-A.

⁹ Ex. 19, Wicker transcript at 122:5-13, 114:2-17, 131:21-25; Exs. 60, 93.

¹⁰ Exs. 89, 89-A.

¹¹ Ex. 19, Wicker transcript at 33:7-19, 36:2-16.

¹² Ex. 41.

¹³ Ex. 8, Ex. 8-A at 2:20-24.

¹⁴ Ex. 67.

¹⁵ Ex. 21; Ex. 22; Ex. 24.

¹⁶ Ex. 25; Ex. 27; Ex. 88.

¹⁷ Ex. 29; Ex. 34; Ex. 87.

¹⁸ Ex. 18, Vassar transcript at 9:18-23; 13:1-12; 13:1-14:9.

¹⁹ Ex. 28.

²⁰ Ex. 23.

²¹ Ex. 30.

²² Ex. 38.

²³ Ex. 36; Ex. 39; Ex. 42; Ex. 12, Godbey transcript at 45:17-47:13, 57:2-21.

²⁴ Ex. 42

²⁵ Ex. 10, Chester transcript at 27:10-28:12.

²⁶ Ex. 45.

²⁷ Ex. 9, Brickman transcript at 15 :19-16 :8.

²⁸ Ex. 32.

²⁹ Ex. 45

³⁰ Ex. 59.

³¹ Ex. 48.

³² Ex. 18, Vassar transcript at 41:18-42:16; Ex. 49.

³³ Ex. 18, Vassar transcript at 43:5-10.

³⁴ Ex. 51.

³⁵ Ex. 71

³⁶ Ex. 13, Maxwell transcript at 32:10-614.

³⁷ Ex. 13, Maxwell transcript at 32:10-14.